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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Orlando Garcia,
Plaintiff,
v.
Kung Wo Company, a California
Corporation;
Tane Chan
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Orlando Garcia complains of Kung Wo Company, a California Corporation; Tane Chan; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff suffers from Cerebral Palsy. He has manual dexterity issues. He cannot walk. He uses a wheelchair for mobility.
2. Defendant Kung Wo Company owned the real property located at or about 718 Grant Ave, San Francisco, California, in June 2021.
3. Defendant Kung Wo Company owns the real property located at or about 718 Grant Ave, San Francisco, California, currently.

1 4. Defendant Tane Chan owned The Wok Shop located at or about 718
2 Grant Ave, San Francisco, California, in June 2021.

3 5. Defendant Tane Chan owns The Wok Shop (“Store”) located at or about
4 718 Grant Ave, San Francisco, California, currently.

5 6. Plaintiff does not know the true names of Defendants, their business
6 capacities, their ownership connection to the property and business, or their
7 relative responsibilities in causing the access violations herein complained of,
8 and alleges a joint venture and common enterprise by all such Defendants.
9 Plaintiff is informed and believes that each of the Defendants herein is
10 responsible in some capacity for the events herein alleged, or is a necessary
11 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
12 the true names, capacities, connections, and responsibilities of the Defendants
13 are ascertained.

14

15 **JURISDICTION & VENUE:**

16 7. The Court has subject matter jurisdiction over the action pursuant to 28
17 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
18 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

19 8. Pursuant to supplemental jurisdiction, an attendant and related cause
20 of action, arising from the same nucleus of operative facts and arising out of
21 the same transactions, is also brought under California’s Unruh Civil Rights
22 Act, which act expressly incorporates the Americans with Disabilities Act.

23 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

26

27 **FACTUAL ALLEGATIONS:**

28 10. Plaintiff went to the Store in June 2021 with the intention to avail

1 himself of its goods or services motivated in part to determine if the
2 defendants comply with the disability access laws. Not only did Plaintiff
3 personally encounter the unlawful barriers in June 2021, but he wanted to
4 return and patronize the business several times but was specifically deterred
5 due to his actual personal knowledge of the barriers gleaned from his
6 encounter with them.

7 11. The Store is a facility open to the public, a place of public
8 accommodation, and a business establishment.

9 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
10 to provide wheelchair accessible paths of travel in conformance with the ADA
11 Standards as it relates to wheelchair users like the plaintiff.

12 13. The Store provides paths of travel to its customers but fails to provide
13 wheelchair accessible paths of travel.

14 14. A few problems that plaintiff encountered was that the ramp that runs
15 up to the entrance had a slope of about 40%, which was too steep for plaintiff.
16 Finally, the paths of travel inside the Store narrowed to less than 36 inches in
17 width in some places.

18 15. Plaintiff believes that there are other features of the paths of travel that
19 likely fail to comply with the ADA Standards and seeks to have fully compliant
20 paths of travel available for wheelchair users.

21 16. On information and belief, the defendants currently fail to provide
22 wheelchair accessible paths of travel.

23 17. Additionally, on the date of the plaintiff's visit, the defendants failed to
24 provide wheelchair accessible sales counters in conformance with the ADA
25 Standards as it relates to wheelchair users like the plaintiff.

26 18. The Store provides sales counters to its customers but fails to provide
27 any wheelchair accessible sales counters.

28 19. One problem that plaintiff encountered was that the sales counter was

1 too high. There was no counter that was 36 inches or less in height that plaintiff
2 could use for his transactions.

3 20. Plaintiff believes that there are other features of the sales counters that
4 likely fail to comply with the ADA Standards and seeks to have fully compliant
5 sales counters available for wheelchair users.

6 21. On information and belief, the defendants currently fail to provide
7 wheelchair accessible sales counters.

8 22. These barriers relate to and impact the plaintiff's disability. Plaintiff
9 personally encountered these barriers.

10 23. As a wheelchair user, the plaintiff benefits from and is entitled to use
11 wheelchair accessible facilities. By failing to provide accessible facilities, the
12 defendants denied the plaintiff full and equal access.

13 24. The failure to provide accessible facilities created difficulty and
14 discomfort for the Plaintiff.

15 25. The defendants have failed to maintain in working and useable
16 conditions those features required to provide ready access to persons with
17 disabilities.

18 26. The barriers identified above are easily removed without much
19 difficulty or expense. They are the types of barriers identified by the
20 Department of Justice as presumably readily achievable to remove and, in fact,
21 these barriers are readily achievable to remove. Moreover, there are numerous
22 alternative accommodations that could be made to provide a greater level of
23 access if complete removal were not achievable.

24 27. Plaintiff will return to the Store to avail himself of its goods or services
25 and to determine compliance with the disability access laws once it is
26 represented to him that the Store and its facilities are accessible. Plaintiff is
27 currently deterred from doing so because of his knowledge of the existing
28 barriers and his uncertainty about the existence of yet other barriers on the

1 site. If the barriers are not removed, the plaintiff will face unlawful and
 2 discriminatory barriers again.

3 28. Given the obvious and blatant nature of the barriers and violations
 4 alleged herein, the plaintiff alleges, on information and belief, that there are
 5 other violations and barriers on the site that relate to his disability. Plaintiff will
 6 amend the complaint, to provide proper notice regarding the scope of this
 7 lawsuit, once he conducts a site inspection. However, please be on notice that
 8 the plaintiff seeks to have all barriers related to his disability remedied. See
 9 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 10 encounters one barrier at a site, he can sue to have all barriers that relate to his
 11 disability removed regardless of whether he personally encountered them).

12

**13 I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
 14 WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all
 15 Defendants.) (42 U.S.C. section 12101, et seq.)**

16 29. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 17 again herein, the allegations contained in all prior paragraphs of this
 18 complaint.

19 30. Under the ADA, it is an act of discrimination to fail to ensure that the
 20 privileges, advantages, accommodations, facilities, goods and services of any
 21 place of public accommodation is offered on a full and equal basis by anyone
 22 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 23 § 12182(a). Discrimination is defined, *inter alia*, as follows:

24 a. A failure to make reasonable modifications in policies, practices,
 25 or procedures, when such modifications are necessary to afford
 26 goods, services, facilities, privileges, advantages, or
 27 accommodations to individuals with disabilities, unless the
 28 accommodation would work a fundamental alteration of those

services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

b. A failure to remove architectural barriers where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are defined by reference to the ADA Standards.

- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

31. When a business provides paths of travel, it must provide accessible paths of travel.

32. Here, accessible paths of travel have not been provided in conformance with the ADA Standards.

33. When a business provides sales or transaction counters, it must provide accessible sales or transaction counters.

34. Here, accessible sales or transaction counters have not been provided in conformance with the ADA Standards.

35. The Safe Harbor provisions of the 2010 Standards are not applicable here because the conditions challenged in this lawsuit do not comply with the 1991 Standards.

36. A public accommodation must maintain in operable working condition those features of its facilities and equipment that are required to be readily accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

37. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 38. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code § 51(b).

11 39. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 40. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
15 rights to full and equal use of the accommodations, advantages, facilities,
16 privileges, or services offered.

17 41. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiff, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21

22 **PRAYER:**

23 Wherefore, Plaintiff prays that this Court award damages and provide
24 relief as follows:

25 1. For injunctive relief, compelling Defendants to comply with the
26 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
27 plaintiff is not invoking section 55 of the California Civil Code and is not
28 seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: July 2, 2021

CENTER FOR DISABILITY ACCESS

By: 

Amanda Seabock, Esq.
Attorney for plaintiff